IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1438 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R. TRIPATHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

H.M. PATEL

Versus

SARDAR VALLABHBHAI PATEL KAPASIYA UDYOG COOP SOC LTD

Appearance:

MR NK MAJMUDAR for Petitioner

MR KG VAKHARIA for Respondent No. 1

M/S PATEL ADVOCATES for Respondent No. 3

CORAM : MR.JUSTICE RAVI R. TRIPATHI

Date of decision: 20/01/2001

ORAL JUDGEMENT

The present petition is filed by one Shri H.M. Patel, who was serving as Production Manger with the respondent Cooperative Society, Sardar Vallabhbhai Patel

Kapasiya Udyog Cooperative Society Limited, Kadiyadara, Idar, District Sabarkantha. It is the case of the petitioner that he was promoted to the post of Production Manager by an order dated 10.10.1984 and since then he was discharging his duties. Thereafter, he was also given some additional duties of Project In charge. When these additional duties were about to be over, the petitioner addressed a letter dated 31.12.1986, which is produced at Annexure 'B' to the petition, wherein he has stated that for the last three and half years, he was doing the work of the Project, right from the inception of the institution and that the said work is about to be over and therefore, he may be relieved from the work. The case of the petitioner is that the said letter dated 31.12.1986 was construed by the respondent as his resignation and that he was not allowed to discharge his duties thereafter. It is also the case of the petitioner that his services came to be terminated by an order dated 31.3.1987, which is not placed on record.

2. The petitioner had served a notice dated 24.3.1987 to the respondent society, wherein several contentions were taken. It is stated therein that the petitioner was discharging the duties as Production Manager right from 1.10.1984 and that soonafter receipt of the notice he should be assigned the said duties. It was also stated that the letter of the society dated 26.11.1985 is not legal one.

3. Mr.Vakharia, learned advocate appearing for the respondent society relying on the judgement in the case of Arvindbhai Mulubhai Bhutaiya & others v. Amreli District Central Cooperative Bank Ltd. & another, reported in 1998 (2) GLR 1740 submitted that the respondent society is a registered cooperative society and that writ is not maintainable against the said society. Mr.Vakharia submitted that in the present case none of the tests laid down in the said judgement are fulfilled so as to see that the present petition is maintainable against the said society. For the present, this contention is not required to be dealt with as the case can be disposed of on other ground.

4. Mr.Vakharia also invited attention of the Court to the fact that the present petitioner had filed a civil suit on 31.3.1987 in the Court of learned Civil Judge, Junior Division, Idar being Civil Suit No.49 of 1987. It is further stated that the civil court had also granted injunction in favour of the petitioner against passing termination order and that according to the petitioner said order is in force even today. The petitioner having

armed himself with the injunction order issued by the civil court has preferred this Special Civil Application and it is stated that the petitioner is filing the present Special Civil Application because the petitioner was informed by the Court that the civil court may not have jurisdiction to grant relief in question and ultimately the suit was required to be withdrawn.

6. Mr.Majmudar, learned advocate for the petitioner is not in a position to make any statement as to whether, when the present petition was admitted by issuing rule on 22.4.1988 the said suit was withdrawn or not. Mr.Majmudar, learned advocate fairly stated that the present respondent society has gone into liquidation. If that is so then the petitioner's right only to get back wages, in case this Court comes to the conclusion that the action of the respondent society is bad in law and is required to be quashed and set aside, will survive and the petitioner will be able to press for the same only if the liquidation proceedings of the society are going on.

7. Mr.Majmudar, learned advocate submitted that in case his information about the society having gone into liquidation or about pendency of the suit, is found factually incorrect, the petitioner may not be deprived of having recourse to legal remedy. It is therefore, clarified that if that is so, the disposal of this petition shall not be a bar to the petitioner for taking recourse to the remedy available to him.

8. The fact that the civil suit was filed and in that injunction order was granted and the fact that the learned advocate is not in a position to state as to whether said suit was withdrawn after the present petition was admitted, this Court is of the opinion that the present petition is not required to be entertained on this short ground. The matter involved disputed questions of fact inasmuch as it is not established as to in what circumstances the letter dated 31.12.1986, Annexure 'B' was written and further as to whether the respondent society was right in construing the said letter as a resignation letter. If at all the petitioner is contending that the said letter was written only for the purpose of relieving him from the additional duties of Project Engineer and he did not intend to resign from the society, he will have to lead evidence giving an opportunity of cross examination to the respondent society.

9. In view of this it is advisable for the petitioner to pursue the alternative remedy.

10. The present petition is disposed of accordingly. Rule is discharged. No order as to costs.

(Ravi R. Tripathi, J.)

karim